



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
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Phone 800-227-8917
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April 28, 2004

Ref:8ENF-LEP

BY FAX and,
FEDERAL EXPRESS

Ray Crosby
1501 East 1500 North
Provo, UT 84604

Re: Transmittal of Unilateral Administrative Order
South West Assay Site, Washington County, Utah

Dear Mr. Crosby:

Enclosed you will find an original, fully executed, Unilateral Administrative Order regarding the South West Assay Superfund site (the Site). This Site consists of real property you own in Washington County, near Leeds, Utah and other such areas nearby this property where contamination has come to be located. This Order directs you to hire an environmental contractor, meet with the Agency's On-Scene Coordinator to discuss how cleanup shall be conducted, and to then commence cleanup activities at the Site. The Order also requires you to provide the Agency with a Final Report once cleanup is complete. The Agency will, at all times, monitor your work at the Site in order to assure compliance with the terms set out in the enclosed Order and Statement of Work.

You have until the close of business on April 30, 2004 to request a conference with the Agency regarding this Order. To request such a conference, your attorney should contact the Agency's single point of contact for this matter, Karen Kellen, Enforcement Attorney, Legal Enforcement Program, at 303-312-6518.

Sincerely,

SIGNED

Michael Risner, Director
Legal Enforcement Program

SIGNED

Sharon L. Kercher, Director
Technical Enforcement Program



Printed on Recycled Paper

cc: K. Kellen, ENF-LEP
M. O'Reilly, ENF-RC
T. Nguyen, EPR-SA
A. Jones, UDEQ
Michael Keller, Esq.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:
Ray A. Crosby,
RESPONDENT.
South West Assay Site
Leeds, Utah

UNILATERAL ADMINISTRATIVE ORDER
DIRECTING CONDUCT OF REMOVAL
ACTION
EPA DOCKET NO. **CERCLA-08-2004-0010**

TABLE OF CONTENTS

I. <u>JURISDICTION AND GENERAL PROVISIONS</u>	3
II. <u>PARTIES BOUND</u>	3
III. <u>FINDINGS OF FACT</u>	4
IV. <u>CONCLUSIONS OF LAW & DETERMINATIONS</u>	7
V. <u>ORDER</u>	8
VI. <u>AUTHORITY OF THE EPA ON-SCENE COORDINATOR</u>	15
VII. <u>ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE</u>	16
VIII. <u>RESERVATION OF RIGHTS</u>	16
IX. <u>OTHER CLAIMS</u>	16
X. <u>MODIFICATIONS</u>	17
XI. <u>NOTICE OF COMPLETION</u>	17
XII. <u>ACCESS TO ADMINISTRATIVE RECORD</u>	18
XIII. <u>OPPORTUNITY TO CONFER</u>	18
XIV. <u>INSURANCE</u>	18
XV. <u>ADDITIONAL REMOVAL ACTIONS</u>	19

XVI. <u>SEVERABILITY</u>	19
XVII. <u>OTHER CLAIMS</u>	19
XVIII. <u>EFFECTIVE DATE</u>	19

EXHIBITS

1. STATEMENT OF WORK
2. ACTION MEMORANDUM

I. JURISDICTION AND GENERAL PROVISIONS

1. This Unilateral Administrative Order for Conduct of Removal Action is issued to Ray A. Crosby, 1501 East 1500 North, Provo Utah 84604, by the United States Environmental Protection Agency, Region VIII ("EPA") pursuant to the authority vested in the President of the United States by Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §9604(e), and delegated to the Administrator of EPA on January 23, 1987, by Executive Order No. 12580, 52 *Fed. Reg.* 2923, and further delegated to the Regional Administrators of EPA Region VIII by Delegation No. 14-6 (November 1987). This authority has been further delegated to the Assistant Regional Administrator for the Office of Ecosystems Protection and Remediation.
2. This Order pertains to property owned by Ray A. Crosby, located approximately one mile west of Leeds, in Washington County, Utah. This Order requires the Respondent to conduct removal actions described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.
3. EPA has notified the State of Utah of this action pursuant to section 106(a) of CERCLA, 42 U.S.C. Section 9606(a).

II. PARTIES BOUND

4. This Order applies to and is binding upon Respondent and his heirs, employees, agents, receivers, trustees, successors and assigns. Any change in ownership of the Site by Respondent, including but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order. Respondent shall ensure that his contractors, subcontractors, and representatives receive a copy of this Order and comply with it. Respondent shall be responsible for any non-compliance with this Order.

III. FINDINGS OF FACT

5. Based upon information available on the date of issuance of this Administrative Order, EPA makes the following Findings of Fact:

Ray A. Crosby (Respondent) owns property in Washington County, Utah, located approximately sixteen miles northeast of St. George, and one mile west of Leeds, Utah. This property was formerly the site of milling operations associated with metals extraction.

6. In the late 1800s and early 1900s, the Cristy Mill operated on the property, using a mercury amalgam process to extract silver from mined rock. These operations resulted in substantial quantities of tailings left on the property. In the 1920s, 1950s and 1970s, several companies attempted to extract minerals from the Cristy Mill tailings using acid and cyanide leaching processes.
7. In 1992, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and 40 C.F.R. §300.410, the Utah Department of Environmental Quality (UDEQ) conducted a Removal Site Inspection (SI) on the property (named the “South West Assay” site). The SI focused primarily on areas where processing operations had occurred, including tailings, former surface impoundments, a former leach pad, and areas where tanks and cylinders had formerly been stored. The investigation identified elevated concentrations of mercury, lead, copper, selenium, silver, and vanadium in soils. Mercury was found in concentrations that exceed established health-based screening levels for exposure from soils.
8. In 1997, UDEQ performed additional sampling at residential properties located adjacent to and near Respondent’s property. The purpose of this investigation was to determine if nearby properties had been affected by tailings from the Cristy Mill site. Sampling results identified elevated levels of mercury, lead, copper, selenium, silver, vanadium and zinc in soil samples collected from residential properties. At the residential properties, mercury was found at concentrations approximately three times background; these samples

exceeded established health-based screening levels for exposure from soils.

9. In the spring of 1999, UDEQ requested that EPA conduct additional sampling at the South West Assay Site, to fully characterize the extent of contamination present, and to evaluate potential risks based on current and future land uses.
10. In the spring of 1999, EPA contacted Respondent and surrounding property owners to request access to conduct sampling activities. Respondent expressed a desire to pursue a voluntary cleanup of the property under Utah's Voluntary Cleanup Program, and requested that EPA delay action pending the outcome of the State process.
11. On June 28, 1999, Respondent submitted an application to UDEQ, pursuant to the Utah Voluntary Cleanup Program, to address contamination at the property. On March 1, 2000, UDEQ rejected this application, citing submission of an inadequate environmental assessment and Respondent's failure to provide additional information requested by UDEQ as principal reasons for rejection.
12. Early in 2000, EPA's environmental response team (ERT) conducted sampling to assess the extent of metal contaminant levels in soils and tailings at the Site. The report documenting this sampling effort is dated May 2001 and is part of the Administrative Record for the Site.
13. Starting in May, 2003, EPA issued Information Request letters to Respondent in order to document ownership, site history and ability to pay, among other things. To date, the Agency has received a partial response from Respondent to its' Information Request letters. The Agency is still awaiting significant information regarding the Respondent's ability to pay.
14. Early in 2004, UDEQ notified EPA that Respondent had initiated the soil excavation activities at the Site without contacting or coordinating with EPA or UDEQ.
15. In February 2004, Agency personnel traveled to the Site to meet with Respondent and

discuss plans for appropriate cleanup of the Site. The discussions included the need for a health and safety plan and sampling plan prior to further work being conducted at the Site. Respondent proceeded subsequent to the Agency's Site visit to conduct further cleanup activities without regard for worker safety or sampling to establish the extent of contamination.

16. On March 15, 2004, EPA sent Respondent a General Notice letter by certified mail at his regular place of business. This letter was returned to the Agency unopened and marked by the U.S. Postal Service as "unclaimed".
17. On or about April 6 and 7, 2004, representatives from Utah's Department of Environmental Quality (UDEQ) learned that Respondent was engaged in significant, site-wide excavation and consolidation of contaminated soils and tailings materials at the Site. Again, these activities were being conducted without regard for worker health and safety, without site security and without having taken samples to establish the extent of contamination and site boundaries.
18. Additional sampling was conducted by ERT on April 6 and 7, 2004. Field instruments indicated the presence of mercury contamination at or above EPA's removal action level in areas already excavated by Respondent. During visual inspection of the excavated areas, it was noted that elemental or "free" mercury was present in several locations, and vapor readings for mercury were elevated in these areas.
19. On April 16, 2004, EPA issued a Cease and Desist letter to Respondent, ordering him to immediately stop all excavation, stockpiling and/or disposal of soils until further notice.
20. Mercury, copper, lead, selenium, silver and vanadium are all hazardous substances as defined by Section 101(14) of CERCLA, 42 U.S.C. §9601(14).
21. Exposure to mercury can result in chronic and acute toxic effects on human health. Excessive exposure to mercury may affect the brain and central nervous system, skin and immune system, and kidneys, depending on the route of exposure. Mercury has been known to cause birth defects.

22. Approximately 47 acres of tailings containing elevated concentrations of metals, including mercury, are present on and around Defendant's property. Windblown contamination and surface water runoff may affect residences located adjacent to and near the site. (Six residences are located in a radius of 1/4 mile to 1 mile from the site). Saltation of metals may occur during dry weather; during storm events, these metals may be flushed into nearby aquatic systems at high concentrations, posing threats to aquatic life. Methyl mercury may bio-accumulate within the food web, posing risks to humans and wildlife in the area.
20. Based on the elevated levels of metals found during sampling on the South West Assay site, EPA has determined that it is necessary to conduct a site-wide removal action to consolidate and contain contaminated soils and tailings material located at the Site.
21. On April 26, 2004, EPA signed an Action Memorandum authorizing the oversight of Respondent's conduct of a removal action at this site, or, in the alternative, the conduct of a removal action using Agency funds.

IV. CONCLUSIONS OF LAW and DETERMINATIONS

Based upon the above Findings of Fact and the Administrative Record supporting this Removal action, EPA has determined that:

22. The South West Assay Site is a "facility" as defined by section 101(9) of CERCLA, 42 U.S.C. §9601(9).
23. The Respondent, Ray A. Crosby, is a "person" as defined by section 101(21) of CERCLA, 42 U.S.C. §9601(21).
24. Respondent is an "owner" and/or "operator" of the facility, as defined by section 101(20) of CERCLA, 42 U.S.C. §9601(20). Respondent is liable under section 107(a)(1) of CERCLA, 42 U.S.C. §9607(a)(1).
25. The contaminants found at the Site, as identified in the Findings of Fact above, include "hazardous substance(s)" as defined by section 101(14) of CERCLA, 42 U.S.C.

§9601(14).

26. The conditions described above in the Finding of Fact constitute an actual and/or threatened "release" of a hazardous substance from the facility into the environment, as defined in section 101(22) of CERCLA, 42 U.S.C. §9601(22).
27. The conditions present at the Site constitute an imminent and substantial endangerment to public health, welfare and/or the environment.
28. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of section 106(a) of CERCLA, 42 U.S.C. section 9606(a).
29. The removal actions required by this Order are necessary to protect the public health, welfare or the environment and are not inconsistent with the NCP and CERCLA.

V. ORDER

Based on the foregoing Findings of Fact, and Conclusions of Law and Determinations set forth above, and the Administrative Record supporting this removal action, EPA hereby orders that Respondent comply with the following provisions, schedules and deadlines, including but not limited to all attachments to this Order, and all documents incorporated by reference into this Order. Respondent is hereby Ordered to perform the following actions:

30. Notice of Intent to Comply

Respondent shall notify EPA in writing within two (2) business days after the effective date of this Order of Respondent's irrevocable intent to comply with this Order. Failure of Respondent to provide such notification within this time period shall be a violation of this Order by Respondent.

31. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

Respondent shall retain (a) contractor(s) to perform the removal action. Respondent shall notify EPA of the qualifications of such contractor(s) within two (2) business days

of the effective date of this Order. Respondent shall also notify EPA of the name(s) and qualification(s) of any additional contractor(s) or subcontractor(s) retained to perform the removal action under this Order at least five (5) days prior to commencement of such removal action. The proposed contractor must demonstrate compliance with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01-002, March 2001) or equivalent documentation as determined by EPA. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by the Respondent. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor and notify EPA of that contractor's name and qualifications within five (5) business days following EPA's disapproval.

Within two (2) days after the effective date of this Order, the Respondent shall designate a Project Coordinator who shall be responsible for administration of all the Respondent's actions required by the Order. Respondent shall submit the designated coordinator's name, address, telephone number, and qualifications to EPA. To the greatest extent possible, the Project Coordinator shall be present on site or readily available during site work. EPA retains the right to disapprove of any Project Coordinator named by the Respondent. If EPA disapproves of a selected Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name and qualifications within five (5) business days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent.

32. Work to Be Performed

Respondent shall remove all tailings, and other waste materials, including waste water

and/or sludge contaminated with mercury and/or cyanide, which originate from or around the heap leach pad excavation. Respondent shall remove contaminated soils from the Site where mercury contamination exceeds the U.S. EPA cleanup goal of 80 mg/kg. All tailings, contaminated soils, waste water, sludge and other materials shall be disposed of in an appropriate manner. The proposed actions are described in more detail in the attached Statement of Work (Exhibit 1).

33. Work Plan Implementation

Within ten (10) business days after the effective date of this Order, the Respondent shall submit to EPA for approval a draft Work Plan for performing the removal action set forth above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the action required by this Order. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If EPA requires revisions, Respondent shall submit a revised draft Work Plan within ten (10) business days of receipt of EPA's notification of the required revisions. Respondent shall implement the Work Plan as finally approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondent shall notify EPA at least 48 hours prior to performing any on-site work pursuant to the EPA approved Work Plan. Respondent shall not commence or undertake any removal actions at the Site without prior EPA approval.

34. Health and Safety Plan

Within ten (10) business days after the effective date of this Order, the Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide, (November 1984, updated July 1988). In addition, the plan shall comply with all current applicable Occupational Safety and Health Administration (OSHA) regulations; Hazardous Waste

Operations and Emergency Response; found at 29 CFR Part 1910. Respondent shall incorporate all changes to the plan recommended by EPA, and implement the plan during the pendency of the removal action.

35. Reporting

Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order by 4:00 p.m. of the first day of each month after the start of the removal action until termination of this Order, unless otherwise directed by the OSC in writing. These reports shall describe, at a minimum, all significant developments during the preceding period, including the project schedule updates; volumes of water and wastes excavated, treated, disposed of on-site, and/or transported offsite; any deviations from the Work Plan; any incidents of unauthorized access to the Site; and any accidents or injuries at the Site.

Respondent shall, at least 30 days prior to the conveyance of any interest in real property at the site, give written notice of this Order to the transferee and written notice to EPA of the proposed conveyance, including the name and address of the transferee. The party conveying such an interest shall require that the transferee comply with Section Four of this Order - Access to Property and Information.

36. Final Report

Within ninety (90) calendar days after completion of all removal actions required under this Order, the Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports". The final report shall include a good faith estimate of total costs or statement of actual costs incurred in complying with the Order; all on-site removal activities, including volumes of water and wastes excavated, treated, disposed on-site and transported off-site; any deviations from the approved Work Plan; dates of starts and completion of activities in the Work Plan; and accompanying appendices containing all

relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

“Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

37. Access to Property and Information

EPA has obtained access from the Respondent and one adjacent land owner (Hanley property). EPA shall obtain access to the McMullen Family Trust property on behalf of Respondent prior to any cleanup activities taking place on that portion of the Site.

Respondent shall obtain access to any other off-site areas to which access is necessary to implement this Order, and shall provide access to all records and documentation related to the conditions at the Site and the action conducted pursuant to this Order. Such access shall be provided to EPA employees, contractors, agents, consultants, designees, representatives, and State of Utah representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct actions which EPA determines to be necessary. Respondent shall submit to EPA, upon request, the results of all sampling or tests and all other data generated by Respondent or his contractor(s), or on the Respondent's behalf during implementation of this Order.

38. Record Retention, Documentation, Availability of Information

Respondent shall preserve all documents and information relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for ten years following completion of the removal actions required by this Order. At the end of this ten year period and 30 days before any document or information is destroyed, Respondent shall notify EPA that such documents and information are

available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA. In addition, Respondent shall provide documents and information retained under this Section at any time before expiration of the ten year period at the written request of EPA.

Respondent may assert a business confidentiality claim pursuant to 40 C.F.R. § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Order, provided such claim is allowed by section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Respondent.

39. Off-Site Shipments

All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, with 42 U.S.C. § 9621(d)(3) and the EPA "Revised Procedures for Implementing Off-Site Response Actions," OSWER Directive Number 9834.11, November 13, 1987. Regional Offices will provide information on the acceptability of a facility under section 121(d)(3) of CERCLA and the above directive.

40. Compliance with Other Laws

Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local; state; and federal laws and regulations except as provided in CERCLA section 121(e) and 40 C.F.R. section 300.415(i). In accordance with 40 C.F.R. § 300.415(i), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental, state environmental, or facility siting laws. (see "The Superfund Removal

Procedures for Consideration of ARARs During Removal Actions," OSWER Directive No. 9360.3-02, August 1991).

41. Emergency Response and Notification of Releases

If any incident, or change in site conditions, during the actions conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondent shall immediately take all appropriate action. The Respondent shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, shall notify the Regional Duty Officer, EPA Region 8, at 303-312-6510, of the incident or site conditions. If Respondent fails to take action, then EPA may respond to the release or endangerment and reserve the right to pursue cost recovery.

In addition, in the event of any release of a hazardous substance, Respondent shall immediately notify EPA's OSC at 1-800-227-8914 and the National Response Center at telephone number (800) 424-8802. Respondent shall submit a written report to EPA within five (5) business days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, not in lieu of, reporting under CERCLA section 103(c) and section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. Sections 11001 et seq.

VI. AUTHORITY OF THE EPA ON-SCENE COORDINATOR

42. The OSC shall be responsible for overseeing the proper and complete implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, 40 CFR 300.120, including the authority to halt, conduct, or direct any action required by this

Order, or to direct any other removal action undertaken by EPA or Respondent at the Site. Absence of the OSC from the Site shall not be a cause for stoppage of work unless specifically directed by the OSC.

43. EPA and Respondent shall have the right to change their designated OSC or Project Coordinator. EPA shall notify the Respondent five (5) business days before any such change is made. Notification may take place orally initially, but shall be followed promptly by written notice.

VII. ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE

44. Violation of any provision of this Order may subject Respondent to civil penalties of up to twenty-seven thousand five hundred dollars (\$27,500) per violation per day, as provided in Section 106 (b) (1) of CERCLA, 42 U.S.C. Section 9606 (b) (1). Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in section 107 (c) (3) of CERCLA, 42 U.S.C. 9607 (c) (3). Should Respondent violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. Section 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. Section 9606.

VIII. RESERVATION OF RIGHTS

45. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondent in the future to perform additional activities pursuant to CERCLA or

other applicable laws. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. Section 9607, for recovery of any response costs incurred by the United States related to this Order or the Site.

IX. OTHER CLAIMS

46. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States shall not be deemed a party to any contract entered into by the Respondent. This Order does not constitute a pre-authorization of funds under Section 111 (a) (2) of CERCLA, 42 U.S.C. Section 9611 (a) (2). Nothing in this Order shall constitute a satisfaction of or release from any claim or cause of action against Respondent.

X. MODIFICATIONS

47. Modification to any plan or schedule may be made in writing by the OSC or at the oral direction of the OSC. If the OSC makes an oral modification, it will be memorialized in writing within 14 calendar days. The effective date of any oral modification is the date that such oral modification is made to Respondent. The rest of the Order may only be modified in writing by signature of the Assistant Regional Administrator for the Ecosystem Protection and Remediation program.

XI. NOTICE OF COMPLETION

48. When EPA determines, after EPA's review of the Final Report, that all removal actions have been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, EPA will provide notice to the Respondent. If EPA determines that any removal activities have not been completed in accordance with this Order, EPA will notify the Respondent by providing a written list of deficiencies. EPA will require the Respondent to modify the Work Plan and correct the deficiencies. Subsequently, the Respondent shall submit a modified Final Report in

accordance with EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Order.

XII. ACCESS TO ADMINISTRATIVE RECORD

49. The Administrative Record supporting this removal action is available for review at EPA's Superfund Records Center located at 999 18th Street, Suite 300, Denver, CO 80202.

XIII. OPPORTUNITY TO CONFER

50. Respondent may request a conference to discuss this Order with EPA no later than April 30, 2004, unless extended by mutual agreement of the parties. At any conference held pursuant to the request, Respondent may appear in person or be represented by an attorney or other representative. If a conference is held, Respondent may present any information, arguments or comments in writing to EPA within 24 hours following the conference. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondent a right to seek review of this Order. Requests for a conference, or any written submittal under this paragraph, shall be directed to Karen Kellen, Enforcement Attorney, Legal Enforcement Program, at 303-312-6518.

XIV. INSURANCE

51. At least 48 hours prior to commencing any on-site work under this Order, the Respondent shall secure and maintain for the duration of this Order, comprehensive general liability insurance with a combined single limit of \$1,000,000. Within the same time limit, Respondent shall provide EPA with certifications of such insurance and a copy of each insurance policy. If Respondent demonstrates by evidence satisfactory to EPA that any

contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then the Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XV. ADDITIONAL REMOVAL ACTIONS

52. If EPA determines that additional removal actions not included in an approved plan are necessary to protect public health, welfare and the environment, EPA will notify Respondent of that determination. Unless otherwise stated by EPA, within 30 days of receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare or the environment, Respondent shall submit for approval by EPA a Work Plan for the additional removal actions. The plan shall conform to the applicable requirements of this Order. Upon EPA's approval of the Work Plan, Respondent shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. The OSC's authority to make oral modifications to any plan or schedule remains the same as is stated elsewhere in this Order.

XVI. SEVERABILITY

53. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause of defense by the Court's order.

XVII. OTHER CLAIMS

54. Nothing in this Order is intended to release any claims, causes of action, or demands, in law or equity, of any party against any entity not subject to this document for any liability it may have arising out of or relating in any way to the Site.

XVIII. EFFECTIVE DATE

55. This Order shall be effective five (5) business days after the Order is signed by the Assistant Regional Administrator for Ecosystems Protection and Remediation.

IT IS SO ORDERED:

Christine S. Lehnertz

04/28/04

Max Dodson

Date

Assistant Regional Administrator

Office of Ecosystem Protection and Remediation

Region 8

U.S. Environmental Protection Agency

EFFECTIVE DATE: **04/28/04**

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON APRIL 28, 2004.